IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
LETTERS PATENT APPEAL NO. 4 OF 1993

M/s. Peico Electronics & Electricals Limited,
Loni-Kalbhor, Pune 412 201 ... Appellant

Vs.

B.K. Shaligaram,
Keshav Kripa, Plot No. 43/1,
Shivdarshan Chawl,
Pune 411 009 ... Respondents

Mr. K.S. Bapat for Petitioner.
Mr. S.R. Nargolkar for Respondent.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : AUGUST 12, 2004

ORAL JUDGMENT (Per Rebello,J.) :

1. The petition by the employer is to impugn the order of learned Single Judge of this Court to refuse to interfere with the order of the Revisional Court holding that the Management had committed the act of unfair labour practice and directing reinstatement of the respondent workman and remanding the matter back to the trial court to decide the issue of backwages. That order is dated 24.7.1992.

2. An enquiry was initiated against Respondent workman pursuant to the chargesheet dated 23.8.1988 in respect of the incident which took place on

23.8.1988. The respondent workman was charged for misconduct under Standing orders 24(a), 24(k) and 24(i). In the enquiry the Enquiry Officer held the workman guilty of the misconduct alleged. The Management of the Petitioners considering the findings at the enquiry and the past record dismissed the respondent from the employment of the company with immediate effect. The order of dismissal came to be issued on 27.2.1989.

3. Petitioner aggrieved by the action of the Respondent Management preferred complaint under provisions of the MRTU & PULP Act. The learned Labour Court held that the enquiry conducted was fair and proper land further also held that the finding of holding respondent workman guilty of the misconduct were not perverse and in these circumstances, dismissed the complaint. The workman respondent aggrieved by the order, preferred revision application. The Revisional Court upheld the findings of the Labour Court that the enquiry was legal and proper. However, in Paragraph No. 6 held that the charges were levelled on patently false reasons and consequently findings recorded by the Enquiry Officer as ratified by the Labour Court were totally incorrect

and perverse and in the light of that directed reinstatement by remanding matter back to the Labour Court for determining the backwages.

4. The order was challenged before this court in Writ Petition No. 4602 of 1992. The learned Judge of this court was pleased to dismiss the petition by the order of 26.11.1992 by holding that there was no satisfactory record to prove conclusively that the alleged incident has taken place. The learned Judge further held even if for the sake of argument it was held that the misconduct was proved, the punishment of termination of service was not warranted on the facts and circumstances of the case. It is this order which is subject matter of challenge before this court. The appeal was admitted by order of this court dated 5.3.1993. The order of the Industrial Court was stayed.

5. At the hearing of the appeal, on behalf of the petitioner, learned counsel contends that the Industrial Court in exercise of its powers could not have interfered with the findings of fact recorded by the Labour Court. The Labour Court had come to the conclusion that misconduct was proved and the findings recorded were not perverse. Once

that be the case, it was not open to the Industrial Court in exercise of revisional jurisdiction to have interfered with the findings recorded by the Labour Court. The argument advanced on behalf of the appellant by the learned counsel on the question of law canvassed may be right. The question however, would still remain whether the findings recorded by the Labour Court on the point of perversity could be gone into in the exercise of the revisional jurisdiction. The findings by the Revisional Court is that the charge against respondent workman were levelled for patently false reasons. Even otherwise the learned Single Judge in exercise of the jurisdiction held that even assuming that the charge was proved, the punishment imposed was disproportionate to the misconduct alleged and proved and in these circumstances held that the punishment of termination was not warranted. The L.P.A. really is therefore, in respect of the challenge to the order passed by the learned Single Judge in the exercise of jurisdiction under Article 227 of the Constitution. The Petition however, was styled as petition under Article 226 and 227 of the Constitution of India and consequently the present Letters Patent Appeal. It may be noted that what is in issue before this

court is only issue pertaining to reinstatement. The issue of backwages is yet to be decided. In such circumstances, whether this court in exercise of its jurisdiction can reverse the findings of the learned Single Judge who had exercised jurisdiction under Articles 226 and 227. That jurisdiction can be exercised only in the event the petitioner before the learned Single Judge were able to show that the order discloses error of law apparent on the face of record and or that the revisional court had no jurisdiction to pass the order which was passed. The order of the REvisional Court was within jurisdiction. The contention only was that the finding of fact would not be reversed. The learned Single Judge in exercise of extra ordinary jurisdiction has recorded finding that there was no satisfactory evidence to prove conclusively the alleged incident. Once that be the case, really speaking this would not be a fit case where this court should interfere in this L.P.A. with the order passed by the learned Single Judge.

6. The learned counsel for the Appellant contended that once the learned REvisional Court has recorded finning that misconduct is not proved, the issue of remand is futile as consequence would be full back

wages. However, considering the fact that learned Single Judge has alternatively taken a view that the punishment of termination was not warranted, instead of allowing the matter to proceed again before the Labour Court and as informed at the bar that the respondent workman had already superannuated, it would be in the fitness that this court itself decide the issue at this stage. The record would show that there are some incidents in the past of which the workman was issued warning and or notice. That being the case, the ends of justice will be met if the order of reinstatement is upheld but backwages reduced to only 50% with continuity of service. In the light of that the following order :

. The order dated 24.7.1992 is partly interfered with. The order of remand is set aside. The order of reinstatement is upheld. However, the respondent workman would be entitled to only 50% backwages with continuity of service. Appeal disposed of accordingly. No order as to costs.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)